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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA
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10 ELSTON T CASTILLO,

11 Petitioner,

12 v.

13 UNITED STATES OF AMERICA.

14 Respondent.

CASE NO. 3:15-CV-05852-RBL-JRC

ORDER TO SHOW CAUSE

15 Petitioner Elston T Castillo has filed a petition for writ of error *coram nobis* under the
16 “All Writs Act,” 28 U.S.C. 1651(a) to challenge his 1997 conviction of unlawful use of a
17 fortified building. Dkt. 4. Petitioner argues that his guilty plea was involuntary and that he was
18 not afforded effective assistance of counsel. *Id.* at 5-6. Petitioner asserts that this Court has
19 jurisdiction to consider the instant petition. *See id.*

20 However, “[i]t is well settled that the writ of error coram nobis is not available in federal
21 court to attack state criminal judgments. A writ of error coram nobis can only issue to aid the
22 jurisdiction of the court in which the conviction was had.” *Sinclair v. Louisiana*, 679 F.2d 513,
23 514 (5th Cir. 1982) (per curiam); *Madigan v. Wells*, 224 F.2d 577, 578 n. 2 (9th Cir. 1955), cert.
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1 | denied, 351 U.S. 911 (1956) (citing 28 U.S.C. § 1651(a); *United States v. Morgan*, 346 U.S. 502,
2 | 506 (1954) (“the writ [of *coram nobis*] can only issue, if at all, only in aid of the jurisdiction of
3 | the [] court which the conviction was had.”); *See Finkelstein v. Spitzer*, 455 F.3d 131, 133-34
4 | (2d Cir. 2006) (collecting cases). *See also, United States v. Tucor International, Inc.*, 35
5 | F.Supp.2d 1172, 1177 (N.D. Cal. 1998) (“[d]istrict courts are therefore authorized to issue the
6 | writ in federal criminal matters pursuant to the All Writs Act, 28 U.S.C. § 1651(a), [citation
7 | omitted] but may not entertain a petition for the writ with respect to challenges to state
8 | convictions”); *Martinez v. Lockyer*, 453 F. Supp. 2d 1150, 1152 (C.D. Cal. 2006) (same).

9 It is unclear whether petitioner’s 1997 conviction was in state or federal court. *See* Dkt. 4.
10 However, the Court notes that according to the state court record in petitioner’s previous 28
11 U.S.C. § 2241 petition, petitioner pled guilty in superior court in Pierce County, Washington, to
12 one count of unlawful use of a fortified building in order to deliver controlled substance. *See*
13 *Castillo v. ICE Field Office Dir.*, 907 F. Supp. 2d 1235, 1236-37 (W.D. Wash. 2012). If
14 petitioner is challenging his 1997 state court conviction, the Court lacks jurisdiction because a
15 writ of *coram nobis* is not available in federal court to attack the judgment of a state court.

16 Petitioner is ordered to show cause no later than **February 4, 2016**, why his writ of
17 *coram nobis* should not be dismissed for lack of subject matter jurisdiction. Failure to show
18 cause will result in a recommendation that this matter be dismissed.

19 Dated this 4th day of January, 2016.

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22 J. Richard Creatura
23 United States Magistrate Judge
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